

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

ASHEVILLE DIVISION

JANE ROE,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil No. 1:20-cv-00666
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	
)	
)	

**PLAINTIFF’S MOTION FOR AN ORDER PROVIDING LEAVE
TO TAKE EARLY WRITTEN DISCOVERY FOR THE LIMITED PURPOSE OF
IDENTIFYING DEFENDANT(S) JOHN DOE(S)
TO AMEND COMPLAINT AND EFFECT SERVICE**

Pursuant to Local Civil Rules 16.1(f) and 26.1, Plaintiff Jane Roe moves for an order providing leave to take early written discovery from Represented Defendants. *See* Doc. Nos. 26 and 27. Plaintiff requests early discovery for the limited purpose of identifying Defendant(s) John Doe(s) (“Doe(s)”) described in Plaintiff’s Complaint in order to (1) amend the Complaint to name identified Doe(s) as defendants and (2) effect service upon those individuals. *See* W.D.N.C. Civ. Rule 6.1(d) (“A party seeking early Court-enforceable discovery may file a motion for leave to take early discovery stating the reasons therefor.”). Absent court-ordered early discovery or intervention, Plaintiff is unable to identify Doe(s) by name or effect service. *See Schiff v. Kennedy*, 691 F.2d 196 (4th Cir. 1982) (recognizing that plaintiffs may identify John Doe(s) defendants “through discovery or intervention by the court”).

This motion should be granted for the following reasons:

1. Plaintiff's Complaint alleges that Doe(s) actively coordinated and participated in violating Plaintiff's constitutional rights. For example, Doe(s) conspired to (1) shut down efforts to take immediate and effective action on Plaintiff's harassment complaints, Complaint ¶¶ 227–35; (2) block Plaintiff from exercising her protected rights, *id.*; (3) retaliate against Plaintiff by denying her a promotion, *id.* ¶¶ 227–28, 236–51; (4) refuse to disclose, or take timely action on, the findings of the investigation into Plaintiff's claims, *id.* ¶¶ 398–99, (5) force Plaintiff to negotiate directly with an alleged violator of her rights, *id.* ¶ 407, (6) disclose Plaintiff's confidential narrative directly to an alleged violator of her rights, *id.* ¶ 451, and (7) refuse to disclose any information to Plaintiff about the disciplinary proceeding on her complaint or the nature of any corrective actions taken, *id.* ¶ 474.

2. The identity, or identities, of Doe(s) is not known to Plaintiff, but is known to Represented Defendants. For example, at numerous points during the EDR process, Defendant James N. Ishida disclosed and described to Plaintiff his communications with Office of General Counsel staff members—that is, with General Counsel Sheryl L. Walter and Doe(s). *See, e.g.*, Exhibit A. Also, as General Counsel, Defendant Sheryl L. Walter, presumably has knowledge of the members of her staff described in Plaintiff's Complaint. In contrast, Plaintiff does not know Doe(s)' identity without early discovery.

3. Plaintiff is prejudiced by not knowing Doe(s)' identity, because Plaintiff has been unable to effect service. On March 6, 2020, Plaintiff served Doe(s) by United States Postal Service certified mail return receipt requested, postage prepaid to “c/o Office of the General Counsel, One Columbus Circle NE, Washington, D.C. 20544.” *See* Exhibit B. Plaintiff's complaint was delivered on March 9, 2020. *See* Exhibit C. The original return receipt, however,

was not returned. *See* Exhibit D. It appears that the United States Postal Service delivered service to individual capacity Defendants at One Columbus Circle NE, Washington, D.C. 20544 (“One Columbus Circle”) without timely obtaining return receipt. For example, service was delivered to One Columbus Circle for Defendant Sheryl L. Walter on March 9, 2020, but she signed the return receipt on March 13, 2020. *See* Doc. No. 16. Plaintiff does not know why the return receipt for Doe(s) has not been returned, but as a member, or members, of Defendant Sheryl L. Walter’s staff, with the same address, it is unlikely that Doe(s) did not receive service.

4. Rather than awaiting the commencement of formal discovery in this case, providing leave to take early discovery of represented defendants to identify Doe(s)’ name at this time will help “to secure the just, speedy, and inexpensive determination of [this] action,” in accordance with the purpose of the Federal Rules. Fed. R. Civ. P. 1.

5. Pursuant to Local Civil Rule 7.1(b), the undersigned has consulted with represented Defendants’ Counsel before filing this Motion. Represented Defendants (1) oppose the motion for John Doe discovery and (2) do not consent to (and oppose) the Plaintiff’s request for voluntary discovery.

For these reasons, the motion should be granted.

Respectfully Submitted,

/s/ Cooper Strickland
Cooper Strickland
N.C. Bar No. 43242
P.O. Box 92
Lynn, NC 28750
Tel. (828) 817-3703
cooper.strickland@gmail.com

Counsel for Plaintiff

April 28, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Gill P. Beck at Gill.Beck@usdoj.gov

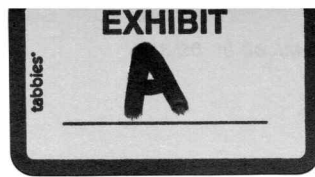
Joshua M. Kolsky at Joshua.kolsky@usdoj.gov

Shannon Sumerall Spainhour at mss@dhwlegal.com

And I hereby certify that I will mail the document by U.S. mail to the following:

John Doe(s)
c/o Office of General Counsel
One Columbus Circle NE
Washington, DC 20544

/s/ Cooper Strickland
Cooper Strickland
N.C. Bar No. 43242
P.O. Box 92
Lynn, NC 28750
Tel. (828) 817-3703
cooper.strickland@gmail.com



Cooper Strickland <cooper.strickland@gmail.com>

Supplement to Mediation Request (EDR Claim)

James_Ishida@ca4.uscourts.gov <James_Ishida@ca4.uscourts.gov>

Sun, Feb 24, 2019 at 4:00 PM

To: cooper.strickland@gmail.com

Cc: RL_Gregory@ca4.uscourts.gov, [REDACTED]@fd.org, [REDACTED],

Edward_Smith@ca4.uscourts.gov, Kim_Llewellyn@ca4.uscourts.gov, James_Ishida@ca4.uscourts.gov

Dear Mr. Strickland,

Thank you for the attached supplement to [REDACTED] original Request for Mediation. Under the Fourth Circuit's EEO/EDR Plan, Chapter X, section 9A, I am obligated to provide a copy of the supplemental request to Chief Judge Gregory and [REDACTED], the unit executive. I am also providing a copy to the mediator, Edward Smith.

As for your request to redact the document, I reached out to the Administrative Office's Office of General Counsel for guidance. The Office advised that the supplemental request is not subject to redaction. However, the General Counsel's Office also noted that [REDACTED] is "prohibited from retaliating against any employees for their participation in, or opposition to, EDR matters."

Best regards,

James

James N. Ishida
Circuit Executive
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 617
Richmond, VA 23217-3517
804-916-2184
james_ishida@ca4.uscourts.gov

Begin forwarded message:

From: "Cooper Strickland" <cooper.strickland@gmail.com>

Date: February 22, 2019 at 6:00:17 PM EST

To: James_Ishida@ca4.uscourts.gov

Cc: RLG@ca4.uscourts.gov, [REDACTED] >

Subject: Supplement to Mediation Request (EDR Claim)

Dear Mr. Ishida:

The following document is a supplement to Complainant [REDACTED] request for mediation under the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan of the United States Court of Appeals for the Fourth Circuit.

If this document is shared with the Federal Defender Office, at any time, it should be subject to redaction to protect the identity of employees referenced in this

If you have any questions, please feel free to contact me. I may be reached by email or by phone at (828) 817-3703.

Cooper Strickland
Representative for Claimant

7017 2400 0000 1620 6877

U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

WASHINGTON, DC 20544

Certified Mail Fee \$3.55
\$2.85
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$2.60

Total Postage and Fees \$9.00

0750
03

Postmark
Here

03/06/2020

Sent To John Doe(s)

Street and Apt. No., or PO Box No.

return receipt requested

City, State, ZIP+4®

20544

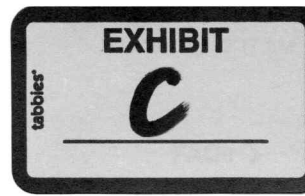
PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

EXHIBIT

B

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[app=U%20psTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st](https://reg.usps.com/xsell?app=U%20psTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st)

Tracking Number: 70172400000016206877

[Remove X](#)

Your item was delivered to the front desk, reception area, or mail room at 7:16 am on March 9, 2020 in WASHINGTON, DC 20544.

✓ Delivered

March 9, 2020 at 7:16 am
Delivered, Front Desk/Reception/Mail Room
WASHINGTON, DC 20544

[Get Updates](#) ✓

Text & Email Updates



Tracking History



March 9, 2020, 7:16 am

Delivered, Front Desk/Reception/Mail Room
WASHINGTON, DC 20544

Your item was delivered to the front desk, reception area, or mail room at 7:16 am on March 9, 2020 in WASHINGTON, DC 20544.

March 8, 2020, 11:45 am

Available for Pickup
WASHINGTON, DC 20544

Feedback

March 8, 2020, 11:40 am

Arrived at Hub

WASHINGTON, DC 20018

March 7, 2020

In Transit to Next Facility

March 6, 2020, 9:48 pm

Arrived at USPS Regional Origin Facility

GREENVILLE SC DISTRIBUTION CENTER

March 6, 2020, 4:45 pm

Departed Post Office

LYNN, NC 28750

March 6, 2020, 4:11 pm

USPS in possession of item

LYNN, NC 28750

Product Information

**Postal
Product:**
First-
Class
Mail®

Features:
Certified Mail™

See tracking for related item: 9590940233957227962658
(/go/TrackConfirmAction?tLabels=9590940233957227962658)

See Less

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

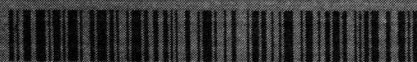


SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John Doe(s)
c/o Office of the General Counsel
One Columbus Circle NE
Washington, DC 20544



9590 9402 3395 7227 9626 58

2. Article Number (Transfer from service label)

7017 2400 0000 1620 6877

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

USPS Tracking®

[FAQs >](#)[Track Another Package +](#)

Get the free Informed Delivery® feature to receive automated notifications on your packages

[Learn More](#)<https://reg.usps.com/xsell?>[app=USPSTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st](https://tools.usps.com/go/TrackConfirmAction?tLabels=9590940233957227962658&app=USPSTools&ref=homepageBanner&appURL=https%3A%2F%2Finformeddelivery.usps.com/box/pages/intro/st)**Tracking Number:** 9590940233957227962658[Remove X](#)

The U.S. Postal Service has received electronic notification on March 6, 2020 at 4:11 pm that you have associated a return receipt to your item.

Pre-Shipment

March 6, 2020 at 4:11 pm
Return Receipt Associated

Tracking History



March 6, 2020, 4:11 pm

Return Receipt Associated

The U.S. Postal Service has received electronic notification on March 6, 2020 at 4:11 pm that you have associated a return receipt to your item.

Product Information

[Feedback](#)

**Postal
Product:**
First-
Class
Mail®

Features:
Return Receipt
USPS Tracking®

See tracking for related item: 70172400000016206877
(/go/TrackConfirmAction?tLabels=70172400000016206877)

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs